

SUMATRA ENERGY CO.

IBLA 81-1010

Decided November 19, 1982

Appeal from decisions of New Mexico State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offers. NM 42379 and NM 42688.

Set aside and remanded.

1. Oil and Gas Leases: Applications: Sole Party in Interest

Oil and gas lease offers filed prior to Feb. 26, 1982, are properly rejected when statements as to other parties in interest required by 43 CFR 3102.2-7(b) (1981) are not timely submitted. Nevertheless, over-the-counter offers may be reinstated and allowed to earn priority from the time of the filing of the missing statements.

APPEARANCES: Debra R. Guerin, Land Manager, Sumatra Energy Company, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

The Sumatra Energy Company has appealed from two decisions of the New Mexico State Office, Bureau of Land Management (BLM), dated July 10, 1981, rejecting appellant's noncompetitive oil and gas lease offers, NM 42379 and NM 42688, because of its failure to file the documents required by 43 CFR 3102.2-7(b), 1/ relating to other parties in interest.

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1/ Subsequent to the decisions appealed from in this case, this regulatory provision was repealed effective Feb. 26, 1982. 47 FR 8544 (Feb. 26, 1982). In the absence of intervening rights which would be adversely affected (e.g., a conflicting offeror whose offer was in compliance with the regulations at the time of filing), a regulation which is amended while an appeal is pending may be applied in its amended form in deciding the case on appeal where it would benefit the appellant. James E. Strong, 45 IBLA 386 (1980). However, such a finding is moot in light of our holding that the defect in the lease offers was rectified and that the offers are entitled to reinstatement as of Aug. 10, 1981 (prior to the regulatory revision).

On September 15 and October 15, 1980, appellant filed noncompetitive oil and gas lease offers with BLM, indicating the other parties in interest as High Plains Petroleum Corporation (High Plains), Capital Energy Corporation (Capital), and Deborah Miles. The noncompetitive offers were filed over-the-counter (rather than through the simultaneous filing procedure) pursuant to section 17 of the Mineral Lands Leasing Act, as amended, 30 U.S.C. § 226(c) (1976).

The applicable regulation, 43 CFR 3102.2-7(b), provides that where there are other parties in interest, the offeror shall file "not later than 15 days after the filing of the offer," a statement setting forth the nature of any oral understanding and a copy of any written agreement between the offeror and the other parties in interest. In addition, the "statement or agreement shall be accompanied by statements, signed by the other parties in interest, setting forth their citizenship and their compliance with the acreage limitations of §§ 3101.1-5 and 3101.2-4 of this title." Id.

In its July 1981 decision regarding lease offer NM 42379, BLM acknowledged that copies of agreements between appellant, High Plains, and Capital had been filed March 31, 1981. However, the offer was rejected because appellant had not filed statements setting forth compliance with the acreage limitations by the other parties in interest or the agreement between appellant and Deborah Miles. In its July 1981 decision regarding lease offer NM 42688, BLM rejected the offer because no documents required by 43 CFR 3102.2-7(b) had ever been filed.

In its statement of reasons for appeal, appellant contends that all the pertinent documents required by 43 CFR 3102.2-7(b) were "personally handed to Raul E. Martinez by Debra R. Guerin, Land Manager of Sumatra Energy Company, Inc. on March 31, 1981." These documents were "original, holographically signed documents and were accepted for all leases that Sumatra Energy Company, Inc. had filed in New Mexico from June 20, 1980 to that date of March 31, 1981." Copies of these documents are submitted with the appeal. Appellant argues that as all of the necessary documents were filed, rejection of its lease offers was "invalid."

Appellant's land manager explains more fully the nature of its March 1981 filing with BLM in a letter to Raul E. Martinez, Chief, Oil and Gas Section, New Mexico State Office, BLM, dated August 5, 1981:

On March 31, 1981, I went to Santa Fe, New Mexico to speak with you regarding the various contracts that had to be filed with each separate lease file according to the regulations in Title 43 CFR 3102.2-7(b). I brought with me holographically signed original agreements pertaining to all the leases that Sumatra Energy Company, Inc. had filed in the state of New Mexico along with the qualifications from Deborah Miles, High Plains Petroleum Corporation, Capital Energy Corporation, a/k/a Sierra Oil and Gas, and Sumatra Energy Company, Inc.. I also brought with me Statements of Interest on Lease numbers NM41580 through NM41591; I later supplied Statements of Interest for NM42688 and NM42379.

\* \* \* You also stated that due to the volume of paperwork that would be involved for the leases that Sumatra Energy Company, Inc. already submitted you would accept my hand-carried

documents as original, holographically signed statements to complete the lease files for every lease that Sumatra Energy Company, Inc. had filed up to that date; this included NM42688 and NM42379. [Emphasis in original.]

By letter dated August 17, 1981, BLM responded to appellant's August 5th letter, pointing out that the statements and copies of agreements filed by appellant on March 31, 1981, were filed under oil and gas lease offer NM 41580 through NM 41591 "as you instructed." Further, the letter explains that BLM attempted to contact appellant in April and May 1981 regarding the deficient filings, with respect to lease offers NM 42379 and NM 42688, but that its telephone calls were not returned.

Review of the documents filed on March 31, 1981, and found in the case file for lease offer NM 42379, discloses a series of contracts between appellant, High Plains, and Capital relating to the acquisition and assignment of interests in unspecified oil and gas leases. Thus, there is a June 3, 1980, contract between High Plains and appellant providing for the farm-out of "no less than five (5) selected prospects" by High Plains to appellant. There is also a June 4, 1980, agreement between High Plains, Capital, and appellant under which Capital and appellant retain High Plains to "generate and prepare geological prospects" in exchange for specified compensation. In addition to providing for acquisition of leases by appellant through High Plains, this agreement provides for assignment to High Plains of certain interests in leases acquired directly by appellant. There is also an agreement of March 20, 1981, between appellant, High Plains, and Capital, apparently amending the June 3, 1980, and June 4, 1980, contracts, providing that appellant shall, under certain circumstances, assign an interest in unspecified leases to High Plains. The contract of March 20, 1981, also provides for an overriding royalty interest in Deborah Miles under certain circumstances. Also, filed for record on March 31, 1981, is a contract of June 6, 1980, between Capital and High Plains providing, under certain circumstances, for assignment by High Plains to Capital of certain interests in appellant's leases. The record also contains a July 3, 1980, contract between Capital and appellant giving Capital a contingent right to acquire an interest in appellant's leases. Further, there is a September 5, 1980, agreement between High Plains and Capital amending the terms of their agreement of June 6, 1980. Copies of all six of these agreements were signed by an employee of BLM to acknowledge receipt on March 31, 1981, with a note that the originals were tendered by appellant on that date and that copies were made in the BLM office. The note further reflects that the copies pertain to lease offers NM 41580 through NM 41591 and NM 42379.

In a supplemental filing titled "Statement of Interest" received by BLM on May 29, 1981, and pertaining expressly to lease offers NM 42379 and NM 42688, the interest of High Plains, Capital, and Miles in appellant's lease offers was defined in terms of the percentage of working interest and/or royalty interest. This statement was certified by officers of appellant, High Plains, and Capital.

Filed with the statement of reasons for appeal on August 10, 1981, is a statement by appellant that no agreement between appellant and Miles has ever existed. Further a copy of an agreement dated June 2, 1980, between Deborah Miles and High Plains is enclosed wherein it is agreed that High

Plains shall assign to Miles an overriding royalty interest of 1 percent in certain "prospects" in return for the service of Deborah Miles as a consulting geologist. Also, enclosed with the appeal is a certification of compliance with citizenship and acreage requirements executed by appellant, High Plains, Capital, and Deborah Miles.

[1] The regulation at 43 CFR 3102.2-7(b) requires that the documents defining the interests of the other parties in interest and certifying their qualifications be filed "not later than 15 days after the filing of the offer." BLM may properly reject a noncompetitive offer where the offeror has not timely complied with 43 CFR 3102.2-7(b). Metro Energy, Inc., 52 IBLA 369 (1981). In the present case, appellant's offers were filed in September and October 1980. Supplemental information regarding the nature of the interests was not filed until March 31, May 29, and August 10, 1981.

The question of when the required documents were filed, however, is crucial to determining priority. The Board has held that a noncompetitive oil and gas lease offer filed over-the-counter, which has been rejected for a failure to submit documents relating to other parties in interest, may be reinstated and earn priority as of the time the required filing is made. Metro Energy, Inc., supra.

As we indicated in Metro Energy, it is incumbent upon an offeror filing a number of oil and gas lease offers to submit the documents required by 43 CFR 3102.2-7(b) with each of his offers. In that case, the appellant had submitted 11 lease offers and only 10 statements in accordance with 43 CFR 3102.7 (the predecessor of 43 CFR 3102.2-7(b)). We concluded: "If only 10 statements are received and none indicates which of the 11 offers it was intended to accompany, BLM may properly reject all 11 offers because it may not arbitrarily select the offers which should be connected with the statements. See Thomas Connell, 7 IBLA 328 (1972)." Metro Energy, Inc., supra at 371.

In Thomas Connell, supra at 331-32, we stressed that each lease offer must be accompanied by the documents required by 43 CFR 3102.7:

Each offer to lease for oil and gas is adjudicated separately on the basis of the material contained in the individual jacket file which comprises the record of that case, and for that reason each offer must be accompanied by all of the necessary supportive material. Except where specifically prescribed by regulation, single submissions will not serve to cover groups of individual offers. Were we to hold otherwise, we would impose upon the Government the obligation to use its manpower, facilities and funds to make and distribute the requisite copies for the benefit of individual offerors, and relieve the offerors of the responsibility for perfecting their own offers. Not only would this add to the administrative burden, but it would be manifestly unfair to those who properly file conflicting offers for the same lands.

In the present case, appellant alleges that BLM orally agreed to accept the required documents on March 31, 1981, with respect to every lease offer appellant had filed up to that time. BLM disputes this. Nevertheless, appellant does not allege that it filed the required documents with each of its

lease offers. BLM was under no duty to search its records and to place a copy of each of the required documents in each case file. Although the notation by a BLM official on the documents filed on March 31, 1981, indicates that copies were accepted for several lease offers including NM 42379, there is no confirmation that copies were provided to BLM for NM 42688. In any event, both lease offers designated Deborah Miles as a party in interest and, prior to the submissions of August 10, 1981, with the appeal, there was no statement signed by the offeror and Miles disclosing the nature of the interest of Miles in the lease offers as required by 43 CFR 3102.2-7(b). The status plat in the case files does not disclose any conflicting offers as of that date. Accordingly, the lease offers may be reinstated and further adjudicated with priority earned as of that date.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are set aside and the cases are remanded for action consistent with this decision.

C. Randall Grant, Jr.

Administrative Judge

We concur:

Gail M. Frazier  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

